

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEVIN MASUDA,

Plaintiff,

v.

CITIBANK, N.A.,

Defendant.

No. C 14-00159 PJH

**ORDER DENYING MOTION TO DISMISS
AND VACATING HEARING**

Before the court is the motion of defendant Citibank, N.A. ("Citibank") for an order dismissing the first and third causes of action alleged in the first amended complaint ("FAC"). Having read the parties' papers and carefully considered their arguments and the relevant legal authority, the court hereby DENIES the motion as follows.

BACKGROUND

Plaintiff Stevin Masuda ("Masuda") alleges that defendant Citibank placed repeated calls to his cell phone, using an automated dialer to call and leave prerecorded telephone messages without consent or an established prior business relationship. Masuda, who was not a Citibank customer, alleges that between April and November 2014 he received over 300 calls from Citibank seeking to collect on a Citibank Mastercard consumer credit card. He alleges that over this period he contacted Citibank by telephone twice to request that the calls stop and that he additionally sent written correspondence twice and an email once requesting that the calls stop, yet they continued.

Masuda originally filed suit in this court on January 10, 2014, alleging causes of action for (1) violation of the Rosenthal Fair Debt Collection Practices Act ("Rosenthal Act"),

1 Cal. Civ. Code § 1788.17, et seq.; (2) violation of the Telephone Consumer Protection Act
 2 ("TCPA"), 47 U.S.C. § 227, et seq.; and (3) intrusion upon seclusion. Masuda filed the FAC
 3 on March 3, 2014, alleging the same three causes of action. Citibank now moves to
 4 dismiss the first and third causes of action for failure to state a claim, leaving undisturbed
 5 the second claim under TCPA in this motion.

6 DISCUSSION

7 A. Legal Standard

8 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests for the legal
 9 sufficiency of the claims alleged in the complaint. Ileto v. Glock, Inc., 349 F.3d 1191,
 10 1199-1200 (9th Cir. 2003). Review is limited to the contents of the complaint. Allarcom
 11 Pay Television, Ltd. v. Gen. Instrument Corp., 69 F.3d 381, 385 (9th Cir. 1995). To survive
 12 a motion to dismiss for failure to state a claim, a complaint generally must satisfy only the
 13 minimal notice pleading requirements of Federal Rule of Civil Procedure 8, which requires
 14 that a complaint include a "short and plain statement of the claim showing that the pleader
 15 is entitled to relief." Fed. R. Civ. P. 8(a)(2).

16 A complaint may be dismissed under Rule 12(b)(6) for failure to state a claim if the
 17 plaintiff fails to state a cognizable legal theory, or has not alleged sufficient facts to support
 18 a cognizable legal theory. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
 19 1990). The court is to "accept all factual allegations in the complaint as true and construe
 20 the pleadings in the light most favorable to the nonmoving party." Outdoor Media Group,
 21 Inc. v. City of Beaumont, 506 F.3d 895, 899-900 (9th Cir. 2007). However, legally
 22 conclusory statements, not supported by actual factual allegations, need not be accepted.
 23 Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009); see also In re Gilead Scis. Sec. Litig., 536
 24 F.3d 1049, 1055 (9th Cir. 2008) (district court is not required to accept as true "allegations
 25 that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences").
 26 The allegations in the complaint "must be enough to raise a right to relief above the
 27 speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citations and
 28 quotations omitted).

A motion to dismiss should be granted if the complaint does not proffer enough facts to state a claim for relief that is plausible on its face. See id. at 558-59. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678 (citation omitted). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged - but it has not 'show[n]' - 'that the pleader is entitled to relief.'" Id. at 679. In the event dismissal is warranted, it is generally without prejudice, unless it is clear the complaint cannot be saved by any amendment. See Sparling v. Daou, 411 F.3d 1006, 1013 (9th Cir. 2005).

Although the court generally may not consider material outside the pleadings when resolving a motion to dismiss for failure to state a claim, the court may consider matters that are properly the subject of judicial notice. Lee v. City of Los Angeles, 250 F.3d 668, 688-89 (9th Cir. 2001); Mack v. South Bay Beer Distributors, Inc., 798 F.2d 1279, 1282 (9th Cir. 1986).

B. Defendant's Motion

Citibank seeks an order dismissing the first cause of action for violation of the Rosenthal Act, and the third cause of action for intrusion upon seclusion.

1. Rosenthal Act Claim

Citibank contends that the first cause of action fails to state a claim because Masuda has not alleged facts showing that he is a "debtor" and that Citibank is a "debt collector."

First, Citibank argues that Masuda lacks standing to bring a cause of action under the Rosenthal Act because he is not a debtor. The Rosenthal Act defines a debtor as "a natural person from whom a debt collector seeks to collect a consumer debt which is due and owing or alleged to be due and owing from such person." Cal. Civ. Code § 1788.2(h). Here, Masuda has standing to bring an action under the Rosenthal Act because he fits perfectly well into the second classification of debtor – those who are *alleged* to have a consumer debt due and owing.

Citibank points to two cases in which the Rosenthal Act has been interpreted as allowing only the person owing a debt to bring this action. Sanchez v. Client Servs., Inc., 520 F. Supp. 2d 1149, 1155 n.3 (N.D. Cal. 2007); People v. Persolve, LLC., 218 Cal. App. 4th, 1267, 1272 n.1 (2013). In both Sanchez and Persolve, however, the plaintiff lacked standing where it was not obligated or allegedly obligated to owe a debt to be collected by the defendant. Neither of these cases is similar to the circumstances here, where Masuda was alleged to owe a debt and Citibank sought to collect it.

Additionally, Masuda has stated a claim that Citibank “engage[d] in conduct the natural consequence of which is to harass, oppress, or abuse” in violation of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692d. Federal judicial interpretations of the FDCPA are incorporated into the Rosenthal Act by Civil Code § 1788.17 such that a plaintiff may state a claim for violation of the Rosenthal Act simply by showing that a defendant violated any of several provisions of the FDCPA, 15 U.S.C. § 1692 et seq. See, Crockett v. Rash Curtis & Assocs., 929 F. Supp. 2d 1030, 1033 (N.D. Cal. 2013) (Alsup, J.).¹ Masuda provided notice on multiple occasions and in multiple forms that it was calling the wrong number to collect its debt. Masuda’s allegation that Citibank called his cell phone over 300 times in spite of this knowledge raises a plausible inference that it intended to harass him in violation of Subsection 1692d(5). Thus, Masuda has standing to bring a claim under the Rosenthal Act.

Second, Citibank argues that Masuda’s claim for relief under the Rosenthal Act fails because Masuda has not pled facts showing that Citibank is a “debt collector.” The Rosenthal Act defines “debt collector” as “any person who, in the ordinary course of business, regularly, *on behalf of himself or herself* or others, engages in debt collection.”

¹Masuda alleges in the FAC that Citibank “violated Civ. Code § 1788.17.” FAC ¶ 157. That Section reads, in relevant part, “every debt collector collecting or attempting to collect a consumer debt shall comply with the provisions of sections 1692b to 1692j, inclusive, of, and shall be subject to the remedies in Section 1692k of, Title 15 of the United States Code.” Cal. Civ. Code § 1788.17. “The Rosenthal Act mimics or incorporates by reference the FDCPA’s requirements . . . and makes available the FDCPA’s remedies for violations.” Riggs v. Prober & Raphael, 681 F.3d 1097, 1100 (9th Cir. 2012).

1 Cal. Civ. Code § 1788.2(c) (emphasis added).² The definition of “debt collector” under the
2 Rosenthal Act is thus broader and more inclusive than under the FDCPA because it allows
3 for those collecting debts on their own behalf to be considered “debt collectors.” See Moya
4 v. Chase Cardmember Serv., 661 F. Supp. 2d 1129, 1132 (N.D. Cal. 2009).

5 Here, Citibank qualifies as a debt collector under the Rosenthal Act because it
6 attempted to collect a credit card debt on its own behalf. These efforts included calling
7 Masuda for months even after he contacted Citibank to confirm he was not its customer or
8 debtor and requested that the calls stop. Therefore, Masuda has stated a claim against
9 Citibank under the Rosenthal Act because he has stated facts showing that he fits within
10 the statute’s definition of “debtor” and that Citibank fits within the statute’s definition of “debt
11 collector.”

12 2. Intrusion upon Seclusion Claim

13 Citibank argues that Masuda fails to plead sufficient facts to support a claim for
14 intrusion upon seclusion. An action for invasion of privacy by intrusion upon seclusion has
15 two elements: (1) an intrusion into a private place, conversation, or matter, (2) in a manner
16 highly offensive to a reasonable person. Taus v. Loftus, 40 Cal. 4th 683, 725 (2007).
17 Courts have held that repeated and continuous calls made in an attempt to collect a debt
18 may give rise to a claim of intrusion upon seclusion. In Fausto v. Credigy Servs. Corp., 598
19 F. Supp. 2d 1049 (N.D. Cal. 2009), the court found that the plaintiffs had raised triable
20 issues as to an invasion of privacy claim, based on allegations that the debt collector's
21 employees had made more than 90 calls to the debtors' home; that the content of the calls
22 had been harassing; and that the employees had failed to identify themselves when calling,
23 and had allowed the phone to ring repeatedly and called back immediately after the debtors
24 hung up the phone. Id. at 1056. In Joseph v. J.J. Mac Intyre Companies, 281 F. Supp. 2d
25 1156 (N.D. Cal. 2002), the court held that there were triable issues of fact as to whether the
26 plaintiff’s privacy was invaded where the debt collector called the plaintiff over 200 times in

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28 ²“The term ‘debt collection’ means any act or practice in connection with the collection
of consumer debts.” Cal. Civ. Code § 1788.2(b).

1 the course of 19 months seeking to collect on a hospital debt. Id. at 1169.

2 Here, Masuda alleges that Citibank called him over 300 times. This includes calls
3 nearly every day from April to November 2013, including many days with multiple calls (up
4 to six per day). Although Masuda does not allege that the content of the calls was
5 offensive, the context of the constant calls viewed in light of the multiple requests that the
6 calls stop (and confirmation from Citibank that they would stop) and the fact that the calls
7 were to a person confirmed to not be Citibank's debtor, could be found by a reasonable jury
8 to be highly offensive. In conclusion, Masuda has pled sufficient facts to state a claim for
9 invasion of privacy by intrusion upon seclusion; he is not required to prove the allegation at
10 this juncture.

11 CONCLUSION

12 In accordance with the foregoing, the motion to dismiss is DENIED. The May 7,
13 2014, hearing date is VACATED.

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15 **IT IS SO ORDERED.**

16 Dated: April 29, 2014



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18 PHYLLIS J. HAMILTON
19 United States District Judge
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